



David B. Cohen  
Mayor

# CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

Michael J. Kruse, Director

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## CONSERVATION COMMISSION

### MEETING MINUTES

**March 26, 2009**

Beginning at 7:30 p.m.

City Hall, Rm 209

**MEMBERS PRESENT:** I. Wallach, Chair, S. Lunin, Vice-chair, N. Richardson, R. Matthews and J. Hepburn

**MEMBERS ABSENT:** D. Dickson, D. Green

**MEMBERS OF THE PUBLIC:** See attached sign-in sheet

#### **Environmental Science Club – David Backer – Report**

**Meeting:** Dave reported that enrollment is up and he has a waiting list. The new brochure may be attracting more students, and the economy may be a factor in higher enrollment, as well, since the program is relatively inexpensive compared to other summer programs. Dave would like to increase the number of students to 50, and requested the Commission seek a variance from Dave Naparstek and the Board of Health to hire Daniel Swartz to be Director of the Environmental Science Program for the summer of 2009 (since Dan is not yet 21). Commission approves both requests and Planner will send out letters

**32 Williams St. – NOI** – continued from 2007- with new plan for 2-family dwelling and driveway in riverfront to the Charles River. A scope of alternatives was submitted.

**Report:** Lot of 9820 sf in riverfront (listed as 6390 sf), with single family house of 1150 sf (11.7% of 9820 sf riverfront). Proposal is to raze the building and build 2-family house with driveway, totaling 3900 sf, 39.7% riverfront.

The Commission waited for requested material on this project for many months. The applicant hired consultants, and since then, the consultants have been presenting new material at each meeting, with no time for prior review by the Planner or the Commission. At the February meeting, the Planner noted two questions that have been outstanding for some time: the question of whether the top of bank had been accurately located and the request from engineering for a new perc test. The applicant's letter [in packet] addresses these two (2) questions and requests the hearing be closed. Regarding delineation of "top of bank," applicant responded that they combined the delineation of top of bank with flood zone on the west side of the lot. A new perc test was conducted and observed by engineering and new plans have been submitted (see below and engineering report).

The applicant states he has overcome the presumptions for all the interests to be protected, except for wildlife (fisheries – the Charles R. has a fish run – herring/alewife) and says only the bank and flood zone area are important for fisheries. Planner believes the applicant has not overcome the presumption that the riverfront area, even beyond the flood zone, provides some protection for the 8 interests under the Act. The existing trees along the bank provide significant bank stabilization and prevention from pollution, their canopies provide habitat for birds as do the trees along the edge of Williams Street, vegetation on the lot slows runoff to the river, helping with infiltration and recharge to the groundwater. The Commission has asked for the applicant to consider an alternative with a smaller footprint, and the Planner has asked for the applicant to propose mitigation for the redevelopment on the lot. The applicant has cited zoning code and economic reasons he cannot reduce the size of the driveway, reduce the size of the garage, and reduce the overall footprint of the house, but there has been no review by Planning and no alternative site plans presented to address the request to consider these alternatives. Since the proposed structure has grown from a single-family house (with one bathroom, as originally proposed) to a two-family house, it may not meet zoning code for lot size, front setback, and other requirements

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and will probably need a Board (of Aldermen) Order. The City's Chief Zoning Officer believes there are alternatives to the proposed plan that could reduce the footprint on the lot.

The Planner believes, minimally, that the driveway is larger than it needs to be, and ideally should be located away from the river;

Two-to-one sf of mitigation should be proposed, with a defined planting area of specified size and detailed planting plan – and providing a list of native, indigenous woody mix of trees and shrubs to be used.

Unless the applicant agrees to continue and address requests to reduce the size of the impact and provide more mitigation, I must recommend the Commission deny the project on the basis the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations under 310 CMR 10.58(4) and 10.58(5).

**Update:** New materials submitted 3-25-2009 by applicant via email (not in packet). New plans submitted to engineering Mar. 17, Mar. 18, Mar. 25. New letter from VHB and update page provided from Environmental Planner – as hand-out.

**Meeting:** Letter from Lisa Standley, VHB, was received by email on March 23 and distributed at the meeting, with new comments/summary from Planner. Planner spoke with DEP analyst to better understand file number letter comments regarding new development in riverfront. Applicant had filled out form (NOI) indicating he thought he qualified as a “limited project,” and no alternatives analysis had been submitted (as required for new work). Following discussion, the Commission indicated the following information be supplied:

- 1) The scope of the mitigation area shown on the site plan as entire area between driveway and top of bank (1650 sf as stated in letter from VHB).
- 2) Above plan should indicate existing trees as individual plants on the plan.
- 3) Invasive species should be dug up, instead of treating with herbicide, if clumps small enough. The rose and knowtweed on the bank are probably relatively weak from previous cutting.
- 4) A de-watering plan is needed.
- 5) An Operations and Maintenance plan for the catch basin is needed.
- 6) A plan to try to reduce the size of the driveway.

S. Lunin asked whether the number of species proposed by VHB (3) for planting in the mitigation area is sufficient. Planner recommended 7 species be used. S. Lunin requested material will be supplied in time for Planner to include in member packets for next meeting. Applicant agrees to continue to April 23 meeting.

**45 Harwich Rd. –RDA** to tear down and re-build a single-family house in the 100 ft buffer zone to bordering vegetated wetland – continued for more information.

**Report:** Snow cover and frozen ground prevented getting soil samples, and owner requested (via email) continuance to Mar. 26<sup>th</sup>, 2009. A site visit with the wetland scientist who flagged the bordering vegetated wetland was conducted on March 17<sup>th</sup>, and Planner agrees with delineation of bordering vegetated wetland as indicated by location of flags 1W-5W. Planner recommends a negative determination on the work provided that the erosion and sediment control measures are installed, inspected and approved prior to the start of work – including installation of silt sac or filter fabric under street storm drains down-gradient from the work.

**Meeting:** Yuri Rosenvayn, owner, was present and described the project. **Motion by R. Matthews for negative determination of Applicability with condition of erosion and sediment control. Second by S. Lunin. Vote: All in favor. Motion passed.**

**9-11 Jaconnet St.-Request to extend OOC** – request for 2-yr extension to complete mitigation.

**Report:** Site visit was made on 3-16-09, and found all exterior excavation and construction is completed. Applicant has agreed to submit a letter stating that, 1) Very large pile of gravel next to end of Jaconnet will be completely removed from the site, and pieces of curbing, pallets and other materials to also be removed; 2) ABC fill that has been graded into a berm along the bank of the river will be removed by hand to the maximum extent possible; 3) lawn area shall be stabilized with seed or sod as soon as possible, and 4) plantings along the bank will be replanted and/or replaced as needed this spring to help promote re-vegetation of the bank with native species. Recommend 2 yrs will be needed for plants – the pines on the bank are in very poor condition and may not survive.

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**Meeting:** Environmental Planner reported that owner, Mr. Robert Jardine, is requesting additional time to stabilize the back yard with vegetation. Also, there is still asphalt, brick, and concrete fill in berm above the top of the bank of mitigation plantings, a pile of gravel at the end of Jaconnet Street in front of the house, some concrete curbing and wooden pallets that need to be removed. Plantings on bank look stressed, with some out of ground. Letter received from consultant John Rockwood that affirmed "loose" ABC fill to be removed, and plantings replaced if needed. The OOC said all man-made material was to be removed prior to issuance of a building permit and bank plantings to be completed the first spring after the Order was issued. **Motion by R. Matthews to withhold extension of Order while owner to remove visible ABC fill and provide proof that work is completed. Will deny extension if work not done in 1 month. Second by S. Lunin. Vote: All in favor. Motion passed.**

**24 Warren St. – Amended NOI-** Minor changes to house, installation of a geothermal well, installation of an underground rainwater collection and reuse tank, extension of pavement and paved walking area for Warren Street with drainage structures, and installation of underground electric duct in the 100 ft buffer zone to bank of Thompsonville Brook; landscaping to include plantings in land under water body and on the bank.

**Report:** There are several concerns, but the two major ones are the planting of the entire bank area (considerably more than 50 ft) and the proposed 150 ft (plus or minus) of paving at the end of Warren and the proposed drainage swale and its direct overflow toward the brook. Engineering and Environmental Planner will be meeting with representative to try to resolve these issues.

**Update:** Issues for Environmental Planner & Engineering resolved, with following recommendations for special conditions:

- 1) Plantings on or below bank or in 8 ft buffer to bank shall not be replaced if they fail to thrive after 1 planting.
- 2) Stumps of trees removed within the 8 ft buffer to bank shall NOT be ground down but shall remain in place for bank stabilization.
- 3) No more than one (1) tree or combined trees totaling 8" in trunk diameter of Norway maples shall be removed from the 100 ft buffer to bank as "invasives" in a given calendar year.
- 4) No irrigation shall be located in the bank or buffer area and no fertilizers or mulch shall be used in the bank or buffer area.
- 5) O&M plan for maintenance of the siltation forebay and water quality swale at the end of the paving of Warren Street shall be submitted and approved by the Environmental Planner prior to issuance of a COC.

Also, recommend maintenance shall be the responsibility of the owner of 24 Warren Street.

**Meeting:** Jim DeVellis (DeVellis Zrein, Inc.) and Catherine Mart, representatives for owner, were present to answer questions about the changes that were being offered. After Planner's recommendations read, Ms. Mart asked that small amount of mulch to be used to establish plants in first year, but none to be used thereafter. Planner agreed. Member of the public, Mr. Octo Barnett, spoke. He is a member of the Newton Conservators and is concerned about whether the modifications to the road would restrict access for wheelchairs to the Conservation Area or the Parks & Recreation property at the end of Warren Street. The Commission asked whether the applicant had received approval from all abutters, including Parks & Recreation, for extension of the paving on Warren Street, a "paper street," and questioned whether it could approve the project without those approvals. Mr. DeVellis had an email from DEP that said court cases have allowed the Order to be issued. The responsibility for getting permission rests with the owner, who would risk legal action from abutters if he were to proceed without abutters' permission.

**Motion by R. Matthews to approve project with all special conditions suggested by Anne (above, with agreed modification regarding mulch). S. Lunin offered modified Motion with condition to maintain handicapped access at end of Warren Street. R. Matthews offered modified motion. N. Richardson seconded motion. Vote: All approved. Motion passed.**

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**42 Day St. –RDA** – Proposed 216 sf sunroom addition and 63 sf new open deck 28 ft from bordering vegetated wetland and in buffer to bank.

**Report:** Proposed work is very close to bordering vegetated wetland, but behind a retaining wall. The only excavation is hand-dug holes for sono-tubes, but erosion and sediment control (entrenched and back-filled silt fence recommended) should be shown on plan.

**Motion:** Ms. Sena Gopal, owner, present for project. I. Wallach asked how many sono-tubes would be installed, and owner replied, “12.” **Motion by S. Lunin to issued negative DOA with condition of installation of silt fence in front of steps between project and wetland. Second by R. Matthews. Vote: All approved. Motion passed.**

**229 Dudley** – NOI- after the fact for installation of pipe under driveway, connection to City sewer (under Emergency Order, and disposal of cess pools.

**Report:** Hook-up to sewer to be completed under Emergency Order has not been completed, but is almost done. I will be communicating with the BOH regarding the best way to dispose of the 2 cess pools. Erosion and sediment control was installed and inspected prior to the start of work.

**Meeting:** Planner reported that hook-up to city sewer, while not completed under second Emergency OOC, is complete now, and one cess pool has been filled. Owner should meet BOH requirements and stabilize the site.

**Motion by N. Richardson to issue OOC with standard conditions. Second by R. Matthews. Vote: All approved. Motion passed.**

### Violations –Updates

#### **Houghton Garden – paint violation**

**Report:** Ms. Hollis and Mr. Weil have each paid one-half the cost of clean-up of Houghton Garden—Research report from Ms. Hollis & Mr. Weil and letter from Mrs. Hollis received Feb. 23<sup>rd</sup> –**they are in your packet.**

I exchanged emails with the students with prompt replies until Jan. 13. I emailed hoping to update the Commission. When a couple of days had passed with no response (and using the exact same email I had used previously), I spoke to the Law Department and then I called B.C. and spoke to Ben Erickson who called me back after consulting with Paul Chebator. At this time, I had no communication from the students with a return address, other than an email. Speaking to the Associate Dean I was informed “the students might be studying abroad during the spring,” but that they had “satisfactorily completed the mitigation asked of them by B.C.,” and that the “check was in the mail – literally, in the mail.” Almost immediately after calling B.C., I received an email response from Ms. Hollis (the Jan. 16<sup>th</sup> email from her). Because Ms. Hollis’ email indicated she had *not* completed the mitigation for B.C., and had not sent a check, and after several weeks had passed, and we had still not received a check, the Law Dept. and I thought we should put things on a bit more formal footing, and drafted a letter. Just before we sent the letter we received a check from Ms. Hollis for her share of the clean-up costs, and changed the wording in the letter, accordingly (see letter dated Feb. 18<sup>th</sup>). We then received payment from Ben Weil (Feb. 19), and a copy of the report from Ms. Hollis and Mr. Weil (dated Feb. 16), titled, “Paint in the Environment.” The research paper apparently was completed to satisfy a requirement by Boston College. (paint 20 in packet).

**Meeting:** The Commission members expressed dissatisfaction with the quality of the report submitted by the students for part of their mitigation, particularly noting a lack of appropriate attribution, and asked the Planner to draft a letter that I. Wallach would modify and sign to send to B.C. and the students.

**15 Harwich Rd –Violation** – Prior and present owner both in violation of new EO issued January meeting. Planner requested help from DEP and believes they will take over the enforcement.

**18 Rockland Av.**— nothing new.

**Update:** OOC expired and applicant has not completed mitigation but has been in touch and intends to install plantings within next 2 months.

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**394 Boylston St.**— nothing new.

**160 Pine St. – Gazebo** – Work has begun, with stream flow diverted through a pipe, sandbagged at either end so that any dirt falling into the streambed will not be washed downstream and can be cleaned out when work is finished.

**1203&1211 Washington** –Nothing new.

**93 Andrew Sts** – nothing new.

**3 Fuller St.** – nothing new.

### Certificates of Compliance (\*needs action)

**\*63 Beethoven St.** – Requested Certificate; as-built submitted with engineer statement that work completed in substantial compliance with OOC. Plantings are installed less than one growing season, but they look very healthy.

**Meeting:** Planner was informed that plantings were completed in the fall, and the plants almost all looked exceptionally healthy. Owner has buyer and wants Certificate of Compliance prior to sale. **Motion by S. Lunin to approve COC. Second by R. Matthews. Vote: All approved. Motion passed.**

**Nothing new on any of the following:**

**MWRA at Kessler**

**15 Marla Circle**

**1676 Commonwealth**

**11-19 Hargrove Circle**

### Announcements & General Business:

**Charles River Watershed Association wants CC to promote/sponsor/participate in clean-up on Saturday April 25<sup>th</sup> from 9 a.m. to 12 p.m. (May 2 is rain date).**

**Meeting:** The Commission agreed to endorse the CRWA clean-up. Anne will send a letter.

**February, 2009 Meeting Minutes** for approval. Motion by R. Matthews to approve the February minutes. Second by N. Richardson. Vote: All approved. Motion passed.

**Marriott Hotel – Update:** The BOA issued a Board Order for the changes made by the Marriott without prior permission. In consideration, the Marriott agreed to provide \$40,000 for installation of a crossing light on Comm. Ave. to be constructed within 4 years. If it is not built, then the Marriott shall "...provide \$20,000 to the City for improvements in Norumbega Park..." **The Marriott also agreed to pay for a new bench and purchase logs to place on path that is eroding.**

### Outstanding issues – discussion

**Proposed ordinance – alternate members** – passed by the BOA 2-18-09

**Non-criminal ticketing – report**

**Meeting:** Chair I. Wallach stated that the Commission cannot ticket for violations of state law (i.e., violations of regulations under 310 CMR 10.00).

Respectfully submitted,

Anne Phelps, Sr. Environmental Planner



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